

LEGISLATIVE BILL 211

Approved by the Governor June 2, 2005

Introduced by Janssen, 15

AN ACT relating to the Nebraska State Historical Society; to adopt the Nebraska Archaeological Resources Preservation Act; to provide penalties; to create the Statewide Cemetery Registry; to provide powers and duties; and to provide operative dates.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 10 of this act shall be known and may be cited as the Nebraska Archaeological Resources Preservation Act.

Sec. 2. The Legislature hereby finds and declares that:

(1) Archaeological sites represent an important public resource embodying the record of our state's cultural heritage;

(2) The resource base of archaeological sites is being threatened at an increasing rate by agricultural, urban, commercial, transportation, governmental, and industrial development; and

(3) The rights of private property owners must be maintained even when their property contains archaeological sites or resources.

Sec. 3. For purposes of the Nebraska Archaeological Resources Preservation Act:

(1) Archaeological resource means any material object of past human life or activities that is of archaeological interest. Such objects include, but are not limited to, pottery, basketry, bottles, weapons, tools, structures or portions of structures, dwellings, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of such items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources unless found in an archaeological context. No object shall be treated as an archaeological resource under this subdivision unless such object is determined to be at least fifty years of age;

(2) Archaeological site means a place or location where archaeological resources are found;

(3) Master archaeological site file means the records inventory of all known Nebraska archaeological sites maintained by the Nebraska State Historical Society;

(4) National Register of Historic Places means the register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of the Interior under the authority of the federal Historic Sites, Buildings, and Antiquities Act, 16 U.S.C. 462(b), and the National Historic Preservation Act, 16 U.S.C. 470a(a)(1)(A);

(5) State agency means any division, department, board, bureau, commission, or agency of the State of Nebraska; and

(6) Undertaking means a project, activity, or program funded in whole or in part under the jurisdiction of a state agency.

Sec. 4. (1) There is hereby established the State Archaeology Office which shall be a division within the Nebraska State Historical Society. The purpose of the office shall be to coordinate and encourage appropriate archaeological undertakings and to preserve archaeological resources. The State Archaeology Office may adopt and promulgate rules and regulations to carry out the purposes of the Nebraska Archaeological Resources Preservation Act.

(2) The State Archaeology Office shall be headed by the State Archaeologist. The State Archaeologist shall be a graduate of a recognized college or university with a graduate degree in archaeology or anthropology and shall have sufficient practical experience and knowledge of archaeology to carry out the purposes of the act.

(3) The State Archaeology Office may:

(a) Promote development of archaeological resources for educational, cultural, tourism, and scientific purposes;

(b) Support popular and avocational interest in archaeological resources through field trips, demonstrations, seminars, and excavations throughout the state;

(c) Conduct a program of locating, identifying, quantifying, and assessing the significance of the state's archaeological resources;

(d) Maintain the master archaeological site file;

(e) Advise state agencies, political subdivisions, nongovernmental

organizations, commercial and business interests, private property owners, individuals, and others as to the provisions and requirements of the act;

(f) Serve as the liaison office in transactions dealing with archaeological resources between state agencies and between the state and the federal government;

(g) Cooperate with state agencies and others in overseeing the execution of undertakings required by the act;

(h) Serve as the liaison office between state agencies and Indian tribes, the Commission on Indian Affairs, or other constituent groups culturally affiliated with archaeological sites involved in undertakings;

(i) Maintain a list of archaeologists qualified to conduct research projects required by the act;

(j) Maintain a permanent repository and electronic data base of published and unpublished sources on the archaeological resources of the state;

(k) Prepare, publish, and distribute for professional use and public education reports, bulletins, pamphlets, maps, and other products necessary to achieve the purposes of the act;

(l) Implement a program of emergency salvage archaeology, which includes surveys and either salvage or preservation of archaeological resources imperiled by development activities or natural forces;

(m) Administer and manage grants, bequests, devises, tax incentives, and easements of property to the state for the purposes of preserving archaeological sites and resources; and

(n) Ensure the long-term curation and management of collections and records resulting from undertakings within the state;

(o) Identify properties included in the National Register of Historic Places that are endangered, and coordinate or facilitate the purchase and maintenance of such properties by other public or private agencies in order to preserve archeological sites or resources located on the properties; and

(p) Conduct all other activities necessary to carry out the purposes of the act.

Sec. 5. (1) Except as provided in subsection (2) of this section, the head of any state agency having jurisdiction over a proposed state or state-funded undertaking, which has potential to affect archaeological resources or sites, shall, prior to the approval of the expenditure of any state funds on the undertaking, notify the State Archaeology Office of the undertaking and cooperate with the office to identify and develop measures to mitigate the effect of the undertaking on any archaeological site or resource that is included in or eligible for inclusion in the National Register of Historic Places.

(2) The Department of Roads shall be exempt from the provisions of the Nebraska Archaeological Resources Preservation Act as long as a cooperative agreement exists between the Department of Roads and the Nebraska State Historical Society which ensures that all highway construction projects meet federal historic preservation legislation and regulations, and such federal preservation legislation and regulations fulfill or exceed the objectives and standards of the act.

(3) Nothing in the Nebraska Archaeological Resources Preservation Act shall be construed to abridge the rights of private property owners and in no case shall a private property owner be required to pay for activities undertaken by the State Archaeology Office.

Sec. 6. The State Archaeology Office may accept, use, disburse, and administer all funds or other property, services, and money allotted to it for purposes of the Nebraska Archaeological Resources Preservation Act and may prescribe the conditions under which such funds, property, services, or money will be accepted and administered.

Sec. 7. (1) Any person who knowingly and willfully appropriates, excavates, injures, or destroys any archaeological resource on public land without written permission from the State Archaeology Office is guilty of a Class III misdemeanor.

(2) When the State Archaeology Office has cause to believe that a person has engaged in or is engaging in any unlawful conduct prescribed in this section, it may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Nebraska rules of civil procedure prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof.

Sec. 8. No person shall enter or attempt to enter upon the lands of another without permission and intentionally appropriate, excavate, injure, or destroy any archaeological resource or any archaeological site. Any person

committing such act is guilty of a Class III misdemeanor.

Sec. 9. The Nebraska State Historical Society may use General Fund appropriations to match other funds, grants, or money received to carry out the Nebraska Archaeological Resources Preservation Act.

Sec. 10. The State Archaeology Cash Fund is hereby created. The fund may be used to carry out the purposes of the Nebraska Archaeological Resources Preservation Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 11. (1) The Nebraska State Historical Society shall establish and maintain the Statewide Cemetery Registry. The registry shall be located in the office of the Nebraska State Historical Society and shall be made available to the public. The purpose of the registry is to provide a central data bank of accurate and current information regarding the location of cemeteries, burial grounds, mausoleums, and columbaria in the state.

(2)(a) Each city, village, township, county, church, fraternal and benevolent society, cemetery district, cemetery association, mausoleum association, and any other person owning, operating, or maintaining a cemetery, pioneer cemetery, abandoned and neglected cemetery, Indian burial ground, mausoleum, or columbarium shall register with the Statewide Cemetery Registry.

(b) Except as provided in subdivision (c) of this subsection, the registration shall include the following:

(i) The location or address of the cemetery, burial ground, mausoleum, or columbarium;

(ii) A plat of the cemetery, burial ground, mausoleum, or columbarium grounds, including any lots, graves, niches, or crypts, if available;

(iii) The name and address of the person or persons representing the entity owning, operating, or maintaining the cemetery, burial ground, mausoleum, or columbarium;

(iv) The inception date of the cemetery, burial ground, mausoleum, or columbarium, if available; and

(v) If the cemetery, burial ground, mausoleum, or columbarium is abandoned, the abandonment date, if available.

(c) The information required in subdivision (b) of this subsection regarding the operation and maintenance of a cemetery, burial ground, mausoleum, or columbarium prior to January 1, 2006, shall be required only if such information is reasonably available to the registering entity.

(d) The entity owning, operating, or maintaining the cemetery, burial ground, mausoleum, or columbarium may include information regarding the history of the operation of the cemetery, burial ground, mausoleum, or columbarium.

(3) The entity owning, operating, or maintaining a registered cemetery, burial ground, mausoleum, or columbarium shall update its entry in the registry every ten years following the initial registration by the entity.

Sec. 12. Section 11 of this act becomes operative on January 1, 2006. The other sections of this act become operative on their effective date.